

1953

May 20

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CONCORD, N.H.

Admiral C. A. Brinkmann
State Director of Civil Defense
State House

Dear Admiral Brinkmann:

In reply to your communication of May 19, 1953 asking whether in case of a local disaster the selectmen or governing body of the town or city affected can order their local civil defense organization to take charge and exercise the emergency powers conferred by the Civil Defense Act (proposed Senate Bill 70) even though a Civil Defense emergency has not been declared by the Governor or Legislature, I advise as follows.

The provisions of section 7 exist only during the existence of a state of civil defense emergency by proclamation of the Governor or Joint Resolution of the House and Senate, or in the event of a natural disaster of major proportions actually occurring. Under section 9 authorizing political subdivisions to exercise certain stated powers pertaining to the performance of public work and protecting the health and safety of persons and property, and providing emergency assistance to the victims of such major disaster, the Act appears to confer a limited authority upon the towns. Section 10 which provides for mutual aid arrangements set up with the approval of the state director appears to refer to disasters too great for the community to deal with unassisted.

Under Senate Bill 70 the Civil Defense Agency is a state agency under state direction and control and except in extreme emergency situations the selectmen have no authority to direct the local civil defense organization to exercise emergency powers. This must be realistically construed. For instance, if through enemy action bombs were dropping on a community one would not reasonably expect the selectmen to clear with you or the Governor before ordering the Civil Defense forces into action, and presumably the local director would spring into action on his own initiative. However, a limited

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local disaster such as a general alarm fire or flood threat to an individual community would not give the selectmen authority to order local civil defense organization, as such, to take over. Participation in such purely local limited disaster, if control is undertaken by selectmen would have to be under the selectmen's individual powers as police officers under existing statutes.

I hope this is helpful to you, and if you have any more questions regarding it or wish to discuss this I am at your service.

Very truly yours,

George F. Nelson
Assistant Attorney General

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